

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 14-592V

Filed: March 18, 2016

UNPUBLISHED

DAVID DUNCAN,

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Petitioner,

*

v.

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SECRETARY OF HEALTH

*

AND HUMAN SERVICES,

*

*

Respondent.

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*

Isaiah Kalinowski, Maglio Christopher and Toale, PA (DC), for petitioner.

Michael Milmo, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On July 11, 2014, David Duncan filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, et seq.,² (the “Vaccine Act” or “Program”). Petitioner alleges he suffered pain and weakness in his shoulder and arm following the administration of the tetanus, diphtheria, and acellular pertussis (“TDAP”) vaccine on October 26, 2012. Petition at 1, 4. (ECF No. 1). The case was assigned to the Special Processing Unit of the Office of Special Masters.

On October 28, 2014, a ruling on entitlement was issued, finding that petitioner was entitled to compensation. (ECF No. 16). On March 18, 2016, respondent filed a proffer on award of compensation [“Proffer”] stating that petitioner should be awarded \$193,000.00. Proffer at 1 (ECF No. 49). According to respondent’s Proffer, petitioner

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post it on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2012)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

agrees to the proposed award of compensation. Id. Furthermore, petitioner has filed an "Acceptance of Proffer." Notice, filed Mar. 18, 2016 (ECF No. 50).

Pursuant to the terms stated in the attached Proffer, the undersigned awards petitioner **a lump sum payment of \$193,000.00 in the form of a check payable to petitioner, David Duncan.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

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DAVID DUNCAN,)	
)	
Petitioner,)	No. 14-592V
)	Chief Special Master Dorsey
v.)	ECF
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
)	

¹ Should petitioner die prior to entry of judgment, respondent reserves the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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Dated: March 18, 2016